(4) The basis for review must be stated on the petition. If the agency head on his own motion gives notice of his intent to review a preliminary order, the agency head shall identify the issues he intends to review.

(5) The agency head shall allow all parties to file exceptions to the preliminary order, to present briefs on the issues, and may allow all parties to participate in oral argument.

(6) The agency head shall:

(a) issue a final order in writing, within fifty-six (56) days of the receipt of the final briefs or oral argument, whichever is later, unless the period is waived or extended with the written consent of all parties, or for good cause shown;

(b) remand the matter for additional hearings; or

(c) hold additional hearings.

(7) The head of the agency or his designee for the review of preliminary orders shall exercise all of the decision-making power that he would have had if the agency head had presided over the hearing. [I.C., § 67-5245, as added by 1992, ch. 263, § 30, p. 783.]

Compiler's notes. Section 29 of S.L. 1992, ch. 263 contained a repeal.

Sec. to sec. ref. This section is referred to in § 67-5243.

67-5246. Final orders — Effectiveness of final orders. — (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of any final order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

(5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

(a) the petition for reconsideration is disposed of; or

(b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A nonparty shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code. [I.C., § 67-5246, as added by 1992, ch. 263, § 31, p. 783.]

67-5247. Emergency proceedings. — (1) An agency may act through an emergency proceeding in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action. The agency shall take only such actions as are necessary to prevent or avoid the immediate danger that justifies the use of emergency contested cases.

(2) The agency shall issue an order, including a brief, reasoned statement to justify both the decision that an immediate danger exists and the decision to take the specific action. When appropriate, the order shall include findings of fact and conclusions of law.

(3) The agency shall give such notice as is reasonable to persons who are required to comply with the order. The order is effective when issued.

(4) After issuing an order pursuant to this section, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(5) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in emergency contested cases or for judicial review thereof. [I.C., § 67-5247, as added by 1992, ch. 263, § 32, p. 783.]

Sec. to sec. ref. This section is referred to in § 67-5254.

67-5248. Contents of orders. — (1) An order must be in writing and shall include:

(a) a reasoned statement in support of the decision. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record supporting the findings.

(b) a statement of the available procedures and applicable time limits for seeking reconsideration or other administrative relief.

(2) Findings of fact must be based exclusively on the evidence in the record of the contested case and on matters officially noticed in that proceeding.

(3) All parties to the contested case shall be provided with a copy of the order. [1965, ch. 273, § 12, p. 701; am. and redesig. 1992, ch. 263, § 33, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5212 and was amended and redesignated as § 67-5248 by § 33 of S.L. 1992, ch. 263, effective July 1, 1993.

Cited in: Baker v. Ore-Ida Foods, Inc., 95 Idaho 575, 513 P.2d 627 (1973).

ANALYSIS

Conclusion of law.
Final decisions.
Fitness of lawyers.
Modifying conditional use permits.
Notice.
Requirements.

Conclusion of Law.

A determination by the department of law enforcement that a driver "refused to take a chemical test of his breath and blood to determine the alcoholic content of his blood" was a conclusion of law and not a finding of fact and the determination being unsupported by findings of fact will be set aside. Mills v. Holliday, 94 Idaho 17, 480 P.2d 611 (1971).

Final Decisions.

Where letters from county officials to petitioners for zoning change referred to initial zoning application as being voided by zoning moratorium and informed them that the process initiated by their first application had been truncated, they contained nothing setting forth facts or conclusions of law regarding the first application for a zoning change, and thus they were not final decisions and did not trigger the limitation period provided for in subsection (b) of § 67-5215. Soloaga v. Bannock County, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

Fitness of Lawyers.

The procedure to be used in character and fitness determinations of lawyers is not governed by this section since this section does not apply to the State Bar Board of Commissioners because they are a part of the judicial rather than the executive branch. Dexter v. Idaho State Bd. of Comm'rs, 116 Idaho 790, 780 P.2d 112 (1989).

Modifying Conditional Use Permits.

Given the fact that counties have been granted the power to grant conditional use permits, coupled with the need for flexibility in land use planning and the lack of a prohibition on when conditions may be changed, counties have the authority to grant new conditional use permits which modify existing permits. Chambers v. Kootenai County Bd. of Comm'rs, 125 Idaho 115, 867 P.2d 989 (1994).

There is no basis in the statutory scheme for requiring proof of changed circumstances before a modification to an existing conditional use permit may be ordered. Chambers v. Kootenai County Bd. of Comm'rs, 125 Idaho 115, 867 P.2d 989 (1994).

Notice.

Where there was no indication or certificate in the record that a speed letter mailed to plaintiff's counsel was in fact mailed or served, the uncertainty of the notice given requires that the notice be held defective and inadequate to start the running of the appeal time. Cortez v. Owyhee County, 117 Idaho 1034, 793 P.2d 707 (1990).

Requirements.

A party is entitled to a final decision containing findings of fact and conclusions of law before seeking judicial review, and where a transcript did not contain either a final decision or the required findings of fact and conclusions of law the district court erred in finding that one commissioner's motion to deny medical indigency assistance, made at the conclusion of a hearing regarding an application for such assistance and upon which no vote was taken, constituted notice of the commissioner's decision, and the district court also erred by dismissing the appeal as untimely. Cortez v. Owyhee County, 117 Idaho 1034, 793 P.2d 707 (1990).

67-5249. Agency record. — (1) An agency shall maintain an official record of each contested case under this chapter for a period of not less than six (6) months after the expiration of the last date for judicial review, unless otherwise provided by law.

(2) The record shall include:

(a) all notices of proceedings, pleadings, motions, briefs, petitions, and intermediate rulings;

(b) evidence received or considered;

(c) a statement of matters officially noticed;

(d) offers of proof and objections and rulings thereon;

(e) the record prepared by the presiding officer under the provisions of section 67-5242, Idaho Code, together with any transcript of all or part of that record;
(f) staff memoranda or data submitted to the presiding officer or the agency head in connection with the consideration of the proceeding; and
(g) any recommended order, preliminary order, final order, or order on reconsideration.
(3) Except to the extent that this chapter or another statute provides otherwise, the agency record constitutes the exclusive basis for agency action in contested cases under this chapter or for judicial review thereof. [I.C., § 67-5249, as added by 1992, ch. 263, § 34, p. 783.]

Sec. to sec. ref. This section is referred to in § 67-5275.

67-5250. Indexing of precedential agency orders — Indexing of agency guidance documents. — (1) Unless otherwise prohibited by any provision of law, each agency shall index all written final orders that the agency intends to rely upon as precedent. The index and the orders shall be available for public inspection and copying at cost in the main office and each regional or district office of the agency. The orders shall be indexed by name and subject.

A written final order may not be relied on as precedent by an agency to the detriment of any person until it has been made available for public inspection and indexed in the manner described in this subsection.

(2) Unless otherwise prohibited by any provision of law, each agency shall index by subject all agency guidance documents. The index and the guidance documents shall be available for public inspection and copying at cost in the main office and each regional or district office of the agency. As used in this section, "agency guidance" means all written documents, other than rules, orders, and pre-decisional material, that are intended to guide agency actions affecting the rights or interests of persons outside the agency. "Agency guidance" shall include memoranda, manuals, policy statements, interpretations of law or rules, and other material that are of general applicability, whether prepared by the agency alone or jointly with other persons. The indexing of a guidance document does not give that document the force and effect of law or other precedential authority. [1965, ch. 273, § 2, p. 701; am. 1980, ch. 204, § 1, p. 468; am. and redesig. 1992, ch. 263, § 35, p. 783; am. 1993, ch. 216, § 108, p. 587; am. 1995, ch. 270, § 3, p. 868.]

Compiler's notes. This section was formerly compiled as § 67-5202 and was amended and redesignated as § 67-5250 by § 35 of S.L. 1992, ch. 263, effective July 1, 1993.

Sections 107 and 109 of S.L. 1993, ch. 216 are compiled as §§ 67-5241 and 67-5252, respectively.

Sections 2 and 4 of S.L. 1995, ch. 270 are compiled as §§ 67-5230 and 67-5272, respectively.

ANALYSIS

Availability for public inspection.
Public utilities commission.

Availability for Public Inspection.

The rules and regulations of an agency must be properly published and made available for public inspection before the doctrine of exhaustion of administrative remedies becomes applicable; therefore trial court could not rule as a matter of law on motion to

dismiss that appellants had not complied with agency regulations and exhausted its administrative remedy in view of factual issue regarding whether or not the agency's regulations had been published. Williams v. State, 95 Idaho 5, 501 P.2d 203 (1972).

To satisfy the requirement that an agency ruling must be made available for public inspection in order to be given full force and effect, an agency must file in its central office a certified copy of each rule adopted by it as required by I.C. § 67-5204 and must "publish" all effective rules adopted by it as required by I.C. § 67-5205. Williams v. State, 95 Idaho 5, 501 P.2d 203 (1972).

In satisfying its duty to publish its rules, an administrative agency must at least furnish state, district and county law libraries with complete sets of pertinent agency rules and regulations; if it fails to do so its rules and regulations are without force and effect. Williams v. State, 95 Idaho 5, 501 P.2d 203 (1972).

Public Utilities Commission.

Pursuant to this section and § 61-501, the public utilities commission may issue rules providing for procedures to be used in assuring compliance with the requirement for full and adequate prefiling of applications. Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n, 98 Idaho 718, 571 P.2d 1119 (1977).

67-5251. Evidence — Official notice. — (1) The presiding officer may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of this state. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs.

(2) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantially prejudicing the interests of any party.

(3) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original if available.

(4) Official notice may be taken of:

(a) any facts that could be judicially noticed in the courts of this state; and

(b) generally recognized technical or scientific facts within the agency's specialized knowledge.

Parties shall be notified of the specific facts or material noticed and the source thereof, including any staff memoranda and data. Notice should be provided either before or during the hearing, and must be provided before the issuance of any order that is based in whole or in part on facts or material noticed. Parties must be afforded a timely and meaningful opportunity to contest and rebut the facts or material so noticed. When the presiding officer proposes to notice staff memoranda or reports, a responsible staff member shall be made available for cross-examination if any party so requests.

(5) The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. [1965, ch. 273, § 10, p. 701; am. and redesig. 1992, ch. 263, § 36, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5210 and was amended and redesignated as § 67-5251 by § 36 of S.L. 1992, ch. 263, effective July 1, 1993.

Cited in: Shokal v. Dunn, 109 Idaho 330, 707 P.2d 441 (1985); Idaho State Ins. Fund v. Hunnicutt, 110 Idaho 257, 715 P.2d 927 (1985); Department of Health & Welfare v. Sandoval, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987).

ANALYSIS

Evidence.
Exhibits.
Failure to object.

Hearsay.
Judicial notice.
Medical indigency.
Official notice.
Oral testimony judicially cognizable.
Testimony.

Evidence.

The pharmacist's conviction for possession of drug paraphernalia, which was a ground for discipline under subdivisions (1)(c)3 and (1)(f) of § 54-1726, was not subject to collateral attack in an administrative agency action, and the judgment of conviction for possession of drug paraphernalia was admissible under this section. Brown v. Idaho State Bd. of Pharmacy, 113 Idaho 547, 746 P.2d 1006 (Ct. App. 1987).

Exhibits.

An unemployment compensation claimant was not prejudiced by the admission of exhibits, where there was absolutely no indication that the appeals examiner or the Industrial Commission relied to any extent on the exhibits, but to the contrary, the Commission relied exclusively on the claimant's statements made at the hearings on the record. Guillard v. Department of Emp., 100 Idaho 647, 603 P.2d 981 (1979).

Failure to Object.

When the claimant did not object when certain exhibits were introduced into the record by the appeals examiner, thereafter the referee and the Industrial Commission were required to include such exhibits as part of the record of the proceedings before the Commission. Guillard v. Department of Emp., 100 Idaho 647, 603 P.2d 981 (1979).

Hearsay.

The liberality as to the admission of evidence allows hearsay evidence to be admitted in hearings before the Industrial Commission at the discretion of the hearing officer. Hoyt v. Morrison-Knudsen Co., 100 Idaho 659, 603 P.2d 993 (1979).

Judicial Notice.

Under subdivision (4) of this section, a county commission was entitled to take judicial notice of its own county ordinances dealing with planning and zoning, and district court erred in concluding otherwise. Hubbard v. Canyon County Comm'rs, 106 Idaho 436, 680 P.2d 537 (1984).

The examiner did not err in taking judicial notice of the defendants' beer and liquor licenses where the Idaho Department of Law Enforcement is the agency which issued the license numbers to the defendants, the defendants' record in this case contained a copy of the defendants' licenses and the defendants presented no evidence to dispute that they were the holders of the two licenses. State, Dep't of Law Enforcement v. Engberg, 109 Idaho 530, 708 P.2d 935 (Ct. App. 1985).

The fact that the proposed decision and order on the company's application for a water permit mentioned the post hearing creation of a ground water unit did not taint the opinion, because creation of the unit was a cognizable fact which the Department of Water Resources was entitled to take notice of under subsection (4) of this section, and the proposed decision and order provided the company with notice that the existence of the unit was included in the department's deliberations, and the company made no objection or request for an additional hearing, pursuant to § 42-1701A(3), to meet the new information concerning the unit. Collins Bros. Corp. v. Dunn, 114 Idaho 600, 759 P.2d 891 (1988).

Medical Indigency.

An applicant for medical assistance bears the burden of proving medical indigency. Intermountain Health Care, Inc. v. Board of County Comm'rs, 107 Idaho 248, 688 P.2d 260 (Ct. App. 1984), rev'd on other grounds, 109 Idaho 299, 707 P.2d 410 (1985).

Official Notice.

Where the public utilities commission took into consideration historical development of electrical rate structuring and made its considerations in light of current political, economic and environmental realities, it did not contravene § 67-5209 and this section as to matters which may be officially noticed in a proceeding. Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n, 102 Idaho 175, 627 P.2d 804 (1981).

Oral Testimony Judicially Cognizable.

Where two cost of service studies were subject of oral testimony but not admitted into evidence, the public utilities commission had them available for consideration since they were judicially cognizable under this section. Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n, 102 Idaho 175, 627 P.2d 804 (1981).

Testimony.

The blanket requirement of the county commissioners, for presentation of "expert" testimony in determining medical indigency, the necessity for medical treatment, and the reasonableness of the hospital bills, is not necessarily correct; the type of testimony warranted can only be determined on consideration of the facts in each case. IHC Hosps. v. Board of Comm'rs, 108 Idaho 136, 697 P.2d 1150, overruled on other grounds sub nom. Intermountain Health Care, Inc. v. Board of County Comm'rs, 108 Idaho 757, 702 P.2d 795 (1985).

Opinions of Attorney General. This act applies to contested cases; 18 month perma-

nency planning dispositional hearings held pursuant to the Adoption Assistance and Child Welfare Act of 1980, 42 USC 675(5), do not fall within the scope of "contested cases" as defined in the Administrative Procedure Act. OAG 88-9.

Collateral References. Determination by board on its own knowledge, without expert evidence, in proceeding for revocation of license of physician. 6 A.L.R.2d 675.

Administrative decision or finding based on evidence secured outside of hearing, and without presence of interested party or counsel. 18 A.L.R.2d 571.

Right of witness to refuse to answer, on the ground of self-incrimination, as to membership in or connection with party, society, or similar organization or group. 19 A.L.R.2d 400.

Privilege applicable to judicial proceedings as extending to administrative proceedings. 45 A.L.R.2d 1296.

Admissibility in administrative proceedings of surveys or polls of public or consumer's opinion, recognition, preference, or the like. 76 A.L.R.2d 633.

Comment note on hearsay evidence in proceedings before state administrative agencies. 36 A.L.R.3d 12.

67-5252. Presiding officer — Disqualification. — (1) Except as provided in subsection (4) of this section, any party shall have the right to one (1) disqualification without cause of any person serving or designated to serve as presiding officer, and any party shall have a right to move to disqualify for bias, prejudice, interest, substantial prior involvement in the matter other than as a presiding officer, status as an employee of the agency hearing the contested case, lack of professional knowledge in the subject matter of the contested case, or any other cause provided in this chapter or any cause for which a judge is or may be disqualified.

(2) Any party may petition for the disqualification of a person serving or designated to serve as presiding officer:

(a) within fourteen (14) days after receipt of notice indicating that the person will preside at the contested case; or

(b) promptly upon discovering facts establishing grounds for disqualification, whichever is later.

Any party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case, other than the agency head, without awaiting designation of a presiding officer.

(3) A person whose disqualification for cause is requested shall determine in writing whether to grant the petition, stating facts and reasons for the determination.

(4) Where disqualification of the agency head or a member of the agency head would result in an inability to decide a contested case, the actions of the agency head shall be treated as a conflict of interest under the provisions of section 59-704, Idaho Code.

(5) Where a decision is required to be rendered within fourteen (14) weeks of the date of a request for a hearing by state or federal statutes or rules and regulations, no party shall have the right to a disqualification without cause. [I.C., § 67-5252, as added by 1992, ch. 263, § 37, p. 783; am. 1993, ch. 216, § 109, p. 587.]

Compiler's notes. Sections 108 and 110 of S.L. 1993, ch. 216 are compiled as §§ 67-5250 and 67-5273, respectively.

67-5253. Ex parte communications. — Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding

officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the proceeding, with any party, except upon notice and opportunity for all parties to participate in the communication. [1965, ch. 273, § 13, p. 701; am. and redesig. 1992, ch. 263, § 38, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5213 and was amended and redesignated as § 67-5253 by § 38 of S.L. 1992, ch. 263, effective July 1, 1993.

Cited in: Department of Health & Welfare v. Sandoval, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987).

67-5254. Agency action against licensees. — (1) An agency shall not revoke, suspend, modify, annul, withdraw or amend a license, or refuse to renew a license of a continuing nature when the licensee has made timely and sufficient application for renewal, unless the agency first gives notice and an opportunity for an appropriate contested case in accordance with the provisions of this chapter or other statute.

(2) When a licensee has made timely and sufficient application for the renewal of a license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by a reviewing court.

(3) This section does not preclude an agency from:

(a) taking immediate action to protect the public interest in accordance with section 67-5247, Idaho Code; or

(b) adopting rules, otherwise within the scope of its authority, pertaining to a class of licensees, including rules affecting the existing licenses of a class of licensees. [1965, ch. 273, § 14, p. 701; am. and redesig. 1992, ch. 263, § 39, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5214 and was amended and redesignated as § 67-5254 by § 39 of S.L. 1992, ch. 263, effective July 1, 1993.

ANALYSIS

Due process.
Suspension of license.
—Effect of bankruptcy stay.
Suspension prior to hearing.

Due Process.

Department of Insurance had both subject matter and personal jurisdiction in proceeding; because the issue of the effect of the lack of a warning letter was not raised until appeal, after insurance agent had received notice of the Department's allegations, presented evidence and received a ruling, there was no merit to insurance agent's due process assertion. Knight v. Department of Ins., 124 Idaho 645, 862 P.2d 337 (Ct. App. 1993).

Suspension of License.

—Effect of Bankruptcy Stay.

The exception under 11 U.S.C. 362(b)(4) to the automatic stay granted with regard to bankruptcy proceedings operated in favor of the Department of Insurance in a matter involving the suspension and revocation of an insurance agent's license where the agent filed for bankruptcy prior to the suspension of his license and prior to the institution of proceedings to revoke same; where the Department of Insurance contended that it was seeking the revocation of agent's insurance license based solely on his alleged fraudulent activities, the court was willing to accept the State's representations, however, if it were to appear that the purpose of the administrative proceedings was to collect premiums allegedly withheld by agent for his own use to compensate the agent's victims, such activities would likely exceed the scope of the § 362(b)(4) exception. In re Fitch, 123 Bankr. 61 (Bankr. D. Idaho 1990).

Suspension Prior to Hearing.

Where substantial evidence existed that an emergency situation existed at a licensed shelter home, the hearing officer's decision to suspend the license prior to the scheduled hearings required by § 39-3303 and this section did not deny the shelter's owners procedural due process, since, even if the suspension effectively terminated the owners' provisional license and adversely affected their economic interests, such interests were of lesser importance than the safety and welfare of the residents. Van Orden v. State, Dep't of Health & Welfare, 102 Idaho 663, 637 P.2d 1159 (1981).

67-5255. Declaratory rulings by agencies. — (1) Any person may petition an agency for a declaratory ruling as to the applicability of any order issued by the agency.

(2) A petition for a declaratory ruling does not preclude an agency from initiating a contested case in the matter.

(3) A declaratory ruling issued by an agency under this section is a final agency action. [I.C., § 67-5255, as added by 1992, ch. 263, § 40, p. 783.]

Compiler's notes. Section 41 of S.L. 1992, ch. 263 contained repeals and § 42 is compiled as § 67-5270.

67-5256 — 67-5269. [Reserved.]

67-5270. Right of review. — (1) Judicial review of agency action shall be governed by the provisions of this chapter unless other provision of law is applicable to the particular matter.

(2) A person aggrieved by final agency action other than an order in a contested case is entitled to judicial review under this chapter if the person complies with the requirements of sections 67-5271 through 67-5279, Idaho Code.

(3) A party aggrieved by a final order in a contested case decided by an agency other than the industrial commission or the public utilities commission is entitled to judicial review under this chapter if the person complies with the requirements of sections 67-5271 through 67-5279, Idaho Code. [I.C., § 67-5270, as added by 1992, ch. 263, § 42, p. 783.]

Compiler's notes. Section 41 of S.L. 1992, ch. 263 contained repeals and § 40 is compiled as § 67-5255.

Sec. to sec. ref. Sections 67-5270 through 67-5279 are referred to in § 41-227.

Inadequate Findings of Fact.

Where the Department of Health's findings of fact were inadequate to support its decision that nursing home exceeded Medicaid percentile caps was due to inefficient operation the matter was remanded to the Department of Health with instructions that the Department should make specific findings of fact and conclusions of law with respect to the questions of whether nursing home was efficiently operated and to what extent its costs above the percentile cap were justified based solely upon the present evidentiary record, without the taking of any new or additional evidence. Idaho City Nursing Home v. Department of Health, 124 Idaho 116, 856 P.2d 1283 (1993) decision under former § 67-5215.

DECISIONS UNDER PRIOR LAW

ANALYSIS

In general.
Agency.
Appeals.
Application.

Conclusions of law.
Contested case.
Denial of application for medical indigency assistance.
scharge of employee.
Discretion of commission.
Erroneous advice provided by agency.
Evidence.
Examination of record.
Exhaustion of administrative remedies.
Final decisions.
Findings.
Method of review.
Record of agency proceedings.
Remand.
Remand to administrative board.
Reversal.
Right to judicial appeal.
Scope of review.
Standard of review.
Subdivision plat applicant.
Trial de novo.
Zoning.
—Aggrieved person.

In General.

An appeal, which was not filed in either the county in which a hearing was held or in the county in which a final decision was made, could not be perfected. Briggs v. Golden Valley Land & Cattle Co., 97 Idaho 427, 546 P.2d 382 (1976).

Agency.

Subsection (3) of § 23-1015 did not make the county and "agency" for the purposes of former laws so as to grant judicial review of a decision to a person other than an applicant. Briggs v. Golden Valley Land & Cattle Co., 97 Idaho 427, 546 P.2d 382 (1976).

Under former law the Board of Corrections was not an "agency" within the meaning of the Administrative Procedures Act, and the judicial review provision did not apply to it. Therefore, there was no appeal to the district court from decisions of the Board of Corrections. Carman v. State, Comm'n of Pardons & Parole, 119 Idaho 642, 809 P.2d 503 (1991).

When the Commission of Pardons and Parole was exercising the powers and duties delegated to it by the Board of Corrections in matters involving parole and probation, it was exercising powers granted to the Board under Idaho Const., Art. 10 § 5. Therefore, it was not an "agency" within the meaning of the Administrative Procedures Act, and former law inapplicable to a parole decision of the Commission of Pardons and Parole. Carman v. State, Comm'n of Pardons & Parole, 119 Idaho 642, 809 P.2d 503 (1991).

Appeals.

Given the close alignment of the Commission of Pardons and Parole with the Idaho Board of Corrections, the fact that the Commission was exercising the parole power delegated to it by the Board, and the fact that the legislature found it necessary to specifically give authority to the Commission to promulgate regulations pursuant to the Administrative Procedures Act in U 20-223(a), the Supreme Court of Idaho concluded that the Commission's parole and probation functions, as were those of the Board of Corrections before it, were exempt from the appeal provision of former law. Carman v. State, Comm'n of Pardons & Parole, 119 Idaho 642, 809 P.2d 503 (1991).

Application.

The 30-day filing deadline in former law applied to the period of time allowed for filing a petition for judicial review in district court after a final decision of the administrative agency and did not apply to limit the time within which to request a hearing before the board of county commissioners. University of Utah Hosp. v. Minidoka County, 120 Idaho 91, 813 P.2d 902 (1991).

Conclusions of Law.

The finding of county commissioners that proposed change in zone classification was in accordance with the intent and policy of the comprehensive plan was not a finding of fact, but rather a conclusion of law which if erroneous could be corrected on judicial review. Love v. Board of County Comm'rs, 105 Idaho 558, 671 P.2d 471 (1983).

Contested Case.

The Department of Employment was not required or entitled to appeal the findings and recommendations of the Commission of Human Rights, since a hearing before the Commission on a sex discrimination claim, held before the Commission was granted authority to issue orders, was not a "contested case." Hoppe v. Nichols, 100 Idaho 133, 594 P.2d 643 (1979).

Decision of Board of County Commissioners denying hospital its right to any notices required to be given under the Idaho Medical Indigency Statutes, including notice of denial or notice of partial denial for county medical aid was not reviewable since it did not involve a contested case. Idaho Falls Consol. Hosps. v. Board of County Comm'rs, 104 Idaho 628, 661 P.2d 1227 (1983).

Denial of Application for Medical Indigency Assistance.

Although the legislature clearly provided that a petition for judicial review to the district court must be filed within 30 days after an administrative agency's final decision, both the Administrative Procedure Act and the Medical Indigency Act made no provision as to the time within which a hospital, health care provider or applicant for assistance must request a hearing before the board of commis-